

REMARKS/ARGUMENTS

Claims 5 through 19 are currently pending and Claims 1 through 4 are canceled. No new matter has been introduced into the claims by the amendment. Claims 5 through 10 have been amended to specify the percentages as weight percent. Support for the amendment is found on page 6, lines 9 through 12 and on page 8, lines 23 through 24. Support for newly added Claims 12 through 18 is found on page 1, lines 7 through 17. Support for the newly added Claim 19 is found on page 5, lines 9 through 36.

Applicants respectfully disagree with the Examiner and traverse the rejections with the following remarks.

Rejection under 35 § U.S.C. 112

The Examiner rejected Claims 5 through 11 under 35 U.S.C. § 112, second paragraph, for being indefinite. The Examiner asserts that the failure to specify the type of percentages in the claims creates ambiguity. In response, Applicants have amended the claims to specify that the percentages are in weight percent. Reconsideration and withdrawal of the rejections under 35 U.S.C. § 112 is respectfully requested.

Rejection under 35 U.S.C. § 103

The Examiner rejected Claims 5 through 11 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent 5,972,399 to Lapre (“Lapre”) in view of the combination with Japanese Patent Application Publication 2000-273101 to Takahashi et al. (“Takahashi”) and the *Plant Biology* journal article by Sorensen et al. (“Sorensen”). The Examiner relies on Lapre as disclosing a carbohydrate, such as rice, having a polysaccharide coating, but admits that Lapre does not teach water soluble polysaccharides derived from potato having the specific uronic content of Applicants’ invention. The Examiner then relies on the advantages of potato-derived pectin taught by Takahashi and asserts that Sorensen discloses that potatoes contain uronic acids. The Examiner concludes that it would have been obvious to use potato-based pectin due to its advantages and to modify the uronic acid content to discover the optimum range. Applicants respectfully disagree.

The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Applicants' invention is a quality enhancer comprising white potato-derived water-soluble acidic polysaccharides having a specific uronic acid content. Applicants have discovered a correlation between the uronic acid content and the ability of the polysaccharide to enhance the quality of cereal foods, such as rice and noodles, by promoting the surface luster of the food and loosening and prevention of clouding in water when the foods are reconstituted. The Examiner fails to provide a rational explanation as to why one of ordinary skill in the art at the time the invention was made would find the invention obvious.

The Examiner correctly notes the differences between the references and the present invention. Neither Lapre, nor Takahashi, discloses the uronic acid content as claimed by Applicants as their invention. In making the rejection, the Examiner relies on Sorensen. Sorensen is a journal article in which potato plants were genetically modified to express an enzyme, endo-galactanase, to determine its effect on the potato's pectin composition (page 7639). The Examiner incorrectly makes the conclusory statement that because the polysaccharide taught by Lapre contains uronic acid and because Sorensen teaches that the amount of uronic acid depends on the potato plant, it would have been obvious to optimize the uronic acid content in a polysaccharide.

The conclusory statement provides no rational explanation as to why a person of ordinary skill in the art would attempt to manipulate the uronic content of the polysaccharide. The Examiner only provides assertions on page 4 of the Office Action to use potato-based polysaccharides which are wholly unrelated to manipulating their uronic acid content. Applicants within their own disclosure note that there is prior art teaching the presence of pectinic acid polysaccharides and starches in white potatoes (page 2 lines 20-34). In order for the Examiner to conclude that a person of ordinary skill would optimize the uronic acid content of a polysaccharide, the Examiner must rely on the Applicants' own discovery correlating the uronic

acid content of polysaccharides with the enhanced quality of the cereal foods containing them, and is therefore resorting to hindsight which is impermissible in making a *prima facie* case of obviousness.

Because the Examiner has failed to provide some teaching or rational explanation as to why a person of ordinary skill in the art would optimize the uronic acid content of the polysaccharides of Applicants' invention, the claims are patentable over the prior art of record. Reconsideration and withdrawal of the rejections under 35 U.S.C. § 103 is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the claims presented herewith are patentable over the prior art of record and in condition for allowance. Applicant respectfully solicits prompt action thereon. If any questions remain, the Examiner is invited to phone the undersigned attorney.

Respectfully submitted,

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